Houses Enactment is that the law lays a very heavy responsibility on the organisers of a lottery and a duty to keep it within the prescribed bounds. So long as they take every reasonable precaution to ensure its remaining private, they will no doubt escape prosecution, but they must exercise constant vigilance to prevent illicit sales, and when any have been made they may, I suppose, always reconvert the lottery into a private one by excluding from access to the lottery the tickets which had been sold in contravention of the law.

The public sale of tickets in an otherwise private lottery must, I think, fall under three possible cases:—

(1) The sale of one ticket only to a non-member. This I have already dealt with. There cannot be a one-ticket lottery.

(2) The sale of a block of tickets to a non-member. Two possibilities arise—

(a) One of the tickets in the block may win a prize. In this case although money "is distributed" it is not distributed "by chance" in the sub-lottery. The only distribution by chance is in the head-lottery, and as soon as it is ascertained that a prize is to be given in the sub-lottery, then the distribution of the prize to the purchaser of the block of tickets becomes automatic and is not made by chance. This position could not arise in the head-lottery, because the number of tickets is unlimited.

(b) If none of the tickets in the block wins a prize, the definition of lottery is not satisfied because no money is distributed.

(3) The sale of a number of tickets to a number of non-members. Then if (a) no prize is won by any of these tickets, there is no distribution of money, and the definition is not satisfied. But if (b) a prize is won, then I think in this instance, and in this instance only, can it be said that the definition is satisfied and that there is a distribution of money by chance. In the definition the word "is" (which is not "may be") implies that there must be a distribution of money by chance and not merely the possibility of a distribution. If the lottery is inchoate, there must, at any rate, be an intention to distribute money among the participants in the lottery, not a mere intention to distribute a sum which may or may not be available, in case it does in fact become available. If, therefore, in only one conceivable case, and that not the most probable, it can be said that the hypothesis of a sub-lottery meets the circumstances, then I think that hypothesis must fail and we must reject the sub-lottery. On the evidence we do not know whether any of the tickets sold obtained a prize or not.

I think that the intention of the legislature is clear. A lottery is *prima facie* forbidden, and if anyone undertake to manage a private lottery, he does so at his peril, and he must be prepared at any time to prove that it is and has remained private, and that he had taken every precaution to prevent the public having access to it.

I think, therefore, that this appeal should be dismissed.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION]
THOMAS, C.J. (F.M.S.), HUGGARD, C.J. (S.S.) & TERRELL, J.
April 18, 1935.

IDRIS BIN HAJI MOHAMED AMIN ..... Appellant-Defendant.

v.

NG AH SIEW .... Respondent-Plaintiff.

[PERAK CIVIL APPEAL NO. 5 OF 1935]

The Malay Reservations Enactment, 1913, sections 7, 8 and 13—Meaning of "right or interest in Reservation-land."

The appellant, the registered proprietor of certain pieces of land in a Malay Reservation, executed charges in favour of the respondent. Subsequently the appellant executed a full power of attorney in favour of the respondent and, on the same date, an agreement whereby he agreed that this power of attorney should not be revocable until after the repayment of the amounts due under the charges. Before these amounts had been paid the appellant revoked this power of attorney and the respondent brought proceedings claiming, *inter alia*, that the agreement and power of attorney constituted a valid and subsisting contract.

Held, that the power of attorney related to a right or interest in Reservation-land and was therefore revocable under sub-section (ii) of section 8 of the Enactment, and that the agreement was contrary to sub-section (i) of section 8.

Held, further, that the whole transaction as represented by the power of attorney and agreement was an obvious attempt to evade the provisions of the Malay Reservations Enactment. 1913, and as such was null and void under section 13.

Decision of Howes, J. reversed.

M. S. Mahendran for the appellant-defendant.
John L. Woods for the respondent-plaintiff.

Cur. ad. vult.

THOMAS, C.J.—The appellant Idris bin Haji Mohamed Amin a Malay is the registered proprietor of certain pieces of land within a Malay Reservation. These lands he charged to the respondent Ng Ah Siew by charges dated the 6th of May, 1929, and the 14th of August, 1930, for the sums of $6,500 and $13,600 respectively. On the 14th of August, 1930, the appellant gave a power of attorney to the respondent.

In that power it was stated that the appellant was unable to give the respondent an irrevocable power of attorney, but had agreed that the right to revoke the said power should be conditional upon the appellant paying the sum of $20,100 due on the two charges.

By the power of attorney the respondent was appointed the true and lawful attorney for the appellant for him and in his name to enter into possession of the rents and profits of the pieces of land, to sell and dispose of all or any part of the pieces of land by private contract or public auction for such price as should seem reasonable to the respondent subject to his duly complying with the requirements of the Malay Reservations Enactment, to give a receipt for the purchase price or rent, to lease the lands within the limits allowed by the Malay Reservations Enactment, to retain as the absolute property of the respondent any sums received on the sale or from the rents and profits in excess of $20,100, to apply on the death of the appellant for letters of administration in respect of the lands in question.

On the 14th of August, 1930, by an agreement in writing the appellant agreed with the respondent that the right to revoke the power of attorney should be conditional upon the payment of $20,100 in respect of the two charges, and that all cocoanuts plucked by the respondent should be accepted in full satisfaction of the interest due on the charges and for payment of annual quit rent, water rate and other charges for clearing the land without any liability to account. The respondent also agreed that for a period of five years he would not sell any of the lands without the written consent of the appellant. After that period the respondent was to be at liberty to sell any of the lands under the powers contained in the power of attorney.

On the 12th of April, 1934, the appellant revoked the power of attorney. The present respondent, therefore, brought a suit praying for certain declarations to the effect that the agreement was a valid contract, and that the power of attorney was not revocable. The present appellant pleaded that the power of attorney was revocable and had been revoked.

The learned trial judge decided that the power of attorney was good and valid, except as to the power to sell, and gave judgment in favour of the present respondent.

Under section 8 of the Malay Reservations Enactment, 1913, no right or interest of any Malay in reservation land shall . . . . be transferred to or vest in any person not being a Malay, and no power of attorney whereof the donee or any donee is a person not being a Malay shall in so far as it relates to any right or interest of a Malay in reservation land be irrevocable. And section 13 says :—

> "All dealings or disposals whatsoever and all attempts to deal or dispose in or of reservation lands contrary to the provisions of this Enactment shall be null and void."

The obvious intention of the Enactment was to secure for Malays only land comprised in Malay Reservations. And it was also the obvious intention of the Enactment that the Enactment should not be evaded. For although an out and out sale might not be effected, yet it might be possible to deal with land in a Malay Reservation so as to pass to a person not being a Malay all the rights which are comprised in the usual ownership, viz. the rights to the rents and profits, the rights to let again and again, the right to determine the price to be received for a sale of the land and the person (subject only to his being a Malay) to whom the land should be sold.

Even if some of these matters might be considered individually as unobjectionable when in a document or in a series of documents practically everything except the nominal ownership has been parted with it must be apparent that the transaction or the series of transactions is merely an evasion of the Enactment.

I am satisfied that the combined effect of the charge, the power of attorney and the agreement, all dated the 10th of August, 1930, amount to such an evasion.

Turning to the power of attorney, at the hearing before the learned trial Judge it was admitted by counsel for the respondent that he could not resist revocation of the power to sell. He at the same time suggested that the right to collect rents and profits stood.

In dealing with the clauses in the power of attorney the learned trial judge said :—"It then became a question whether the good and the void portion of the power of attorney are severable." By these words he no doubt intended that where in the same power of attorney there was a clause which related to a right or interest of a Malay in reservation land, and another which did not, it became a question whether the clauses are severable.

It was admitted in respect of the power to sell that the power of attorney could not be irrevocable.

With regard to the power to take the profits of the land (viz. the cocoanuts) the learned trial Judge decided that this did not amount to a right or interest in land. He says that there are numerous English decisions showing that a right to cut growing crops or standing timber does not create an 'interest in land.' Whether a right to take the crops amounts to an interest in the land or not depends on the intention of the parties—[see *Marshall* v. *Green*, (1875) 1 C.P.D. 35] The sale of a growing crop rapidly approaching maturity, which is to be removed as soon as possible, may not be an interest in land, but a right to take the crops over a number of years, as is provided for in the power of attorney, does unquestionably amount to a right or interest in land—(see *Chitty* on Contracts 18th Ed. page 358).

A power to collect rents on behalf of another need not of itself necessarily create an interest in land. But in this case the power is not limited to collection, there is the additional power to retain as the absolute property of the attorney without any liability to account. It is not for a short period only but for a number of years. Such a power in my opinion does amount to a right or interest in land.

It has further been argued that the words 'right or interest in land' relate to some registrable right or interest in land. If such had been the intention of the legislature, no doubt the word 'registrable' would have been inserted. Its omission is noticeable, and in view of the whole tenor of the Enactment, cannot be deemed to have been unintentional. If such a construction were placed upon the words 'right or interest' in land, it is obvious that the means of evasion would be much increased.

In as much as in my view all these powers relate to a right or interest in land, it is not necessary to consider the question of severability.

It has also been argued that though a power of attorney relating to an interest in land cannot be irrevocable, yet there is nothing to prevent an agreement being entered into that the power of attorney shall not be revoked until a condition has been complied with. The condition in this power was the payment of a sum of $20,100. In my opinion the words employed are only another way of saying that the power of attorney is irrevocable until the sum of $20,100 has been paid.

Since I have found that the power of attorney relates to a right and interest in land, it cannot be irrevocable (section 8). The provisions contained in section 8 cannot be nullified by any contract entered into by the parties. Therefore the condition is of no effect as being contrary to the Enactment.

In dealing with the agreement of the 14th of August, 1930, I do not consider it necessary to repeat what I have already said when dealing with the power of attorney. It is enough to find that it offends against section 8 of the Malay Reservations Enactment, and cannot be enforced.

In my opinion, therefore, this appeal should be allowed. The judgment of the Court below must be set aside, and the plaintiff's (present respondent's) suit must be dismissed with costs.

I would wish to add that no question has been raised in this appeal with regard to section 14 of the Malay Reservations Enactment. The Enactment itself has been repealed by Enactment No. 30 of 1933. Section 14 of the Enactment of 1913 has been replaced by section 20 of the new Enactment. The section is reproduced verbatim with one exception i.e., the words "may be referred through the Resident" are now "shall be referred through the Resident."

HUGGARD, C.J. (S.S.):—

This is an appeal from the decision of Howes, J. in a matter arising under the Malay Reservations Enactment No. 15 of 1913, which has now been repealed.

It may be convenient in the first instance to indicate briefly the main features of that Enactment.

It was, as described in its Title, an Enactment to provide for securing to Malays their interests in Land. Section 3 empowered the Resident of any State, with the approval of the Ruler in Council, to declare any area of land within the State to be a Malay Reservation, all land so declared being defined for the purposes of the Enactment as "Reservation-land." Section 7 provided that no State land included within a Malay Reservation should be sold, leased or otherwise disposed of to any person not being a Malay. Section 8 (i) provided that no right or interest of any Malay in Reservation-land should, except in pursuance of a sale effected with the consent of the Ruler in Council, be transferred to or vest in any person not being a Malay; an exception, however, being made as regards a lease for a term not exceeding three years. Section 8 (ii) provided that no power of attorney whereof the donee or any donee is a person not being a Malay should, in so far as it related to any right or interest of a Malay in Reservation-land, be irrevocable. Section 9 provided that no right or interest of any Malay in Reservation-land should be sold in execution of a decree to any person not being a Malay. Section 10 provided that no right or interest of any Malay in Reservation-land should be sold at the instance of a chargee without the consent of the Ruler in Council. And, finally, section 13 provided that all dealings or disposals whatsoever and all attempts to deal in or dispose of Reservation-lands contrary to the provisions of the Enactment should be null and void.

From these provisions it is clear that the intention of the Enactment was to preclude Malays from parting with any right or interest in Reservation-lands, except to the very limited extent permitted by the Enactment, to persons of any other race.

In the present case the appellant was the registered proprietor of certain pieces of Reservation-land, and on the 6th May, 1929, and 14th August, 1930, respectively, he executed charges in favour of the respondent over these lands to secure the repayment of sums of $6,500 and $13,600 with interest.

On the 14th August, 1930 (the same date as the second Charge) the appellant executed a Power of Attorney in favour of the respondent, and on the same date he also executed an Agreement whereby he agreed that the Power of Attorney should not be revocable until after

repayment of the amounts due under the two Charges.

On the 12th April, 1934, the appellant informed the respondent that he had revoked the Power of Attorney, and as a result the present proceedings were instituted by the respondent who claimed, *inter alia*, declarations that the Agreement of the 14th August, 1930, was a good, valid and subsisting contract between the parties and that the Power of Attorney of the same date was also good, valid and subsisting and was not revocable until the amounts due under the Charges had been repaid.

The appellant resisted this claim by contending that the Agreement contravened the provisions of the Malay Reservations Enactment and therefore null and void, and, as regards the Power of Attorney, that he was entitled to revoke it under the provisions of the same Enactment.

The learned Judge in the Court below held, however, that the powers given to the respondent under the Agreement and the Power of Attorney did not create a right or interest in Reservation-land so as to render the Power of Attorney revocable under section 8 (ii) of the Enactment, and that the transaction did not amount to a dealing in or disposal of Reservation-land so as to render it null and void under section 13. He accordingly held that the Power of Attorney was good and valid, except so far as it conveyed the right to sell the lands, and subject to this he granted to the respondent the declarations which he claimed.

It is from that decision that this appeal has been taken.

The whole question in this case is whether the Power of Attorney and the Agreement deal in or dispose of a right or interest in land. If the answer to this question is in the affirmative then, notwithstanding the terms of the Agreement, the Power of Attorney is revocable under section 8 (ii) of the Enactment and the Agreement itself is rendered null and void under section 13.

The Power of Attorney, after reciting the charges of the 6th May, 1929, and 14th August, 1930, conferred on the respondent the following powers in regard to the lands in question:—

(a) To enter into possession of the rents and profits;
(b) To sell and dispose of all or any part of the lands together with the houses or buildings thereon either by private contract or by public auction;
(c) To give a good receipt for the purchase price or the rent;
(d) To lease or otherwise dispose of the lands within the limits allowed by the Enactment;
(e) To retain as his absolute property any sums received by him on the sale of or from the rents and profits of the lands in excess of $20,100 without any liability to account.
(f) On the death of the appellant to apply for letters of administration to the property in question.

Then under the Agreement, after again reciting the Charges, the appellant agreed that his right to revoke the Power of Attorney should be conditional on his paying to the respondent the sum of $20,100 due under the Charges, and that all cocoanuts plucked by the respondent should be accepted by him in satisfaction of interest and for payment of annual quit rent, water rate and other charges for clearing the land without any liability to account.

It was admitted on behalf of the respondent, both in this Court and in the Court below, that the power to sell amounted to a right or interest in the lands and that therefore, under the provisions of section 8 (ii) of the Enactment, the Power of Attorney must be revocable to the extent of that particular power. It was also admitted that the right to pluck cocoanuts might amount to a right or interest in land. It was argued, however, that although some of the rights conferred by the Power of Attorney and the Agreement might be objectionable, those rights could properly be severed so that the remaining rights would be good and valid.

It is true, of course, that some of the rights conferred do not necessarily, if taken by themselves, create an interest in land, but in my opinion, in a case of this kind, one must look at the transaction as a whole. And when one considers the Power of Attorney and Agreement in conjunction with the Charges, it seems clear that the intention of the parties was that the appellant should transfer to the respondent everything but the actual ownership of the lands in question. The whole transaction as represented by the Power of Attorney and Agreement was, in my view, an obvious attempt to evade the provisions of the Malay Reservations Enactment and must be regarded as null and void under section 13 of that Enactment.

In my opinion the appellant is correct in contending that the Power of Attorney relates to a right or interest in Reservation-land and is therefore revocable under section 8 (ii); and I am also of opinion that the Agreement is contrary to the provisions of section 8 (i) and therefore unenforceable.

In these circumstances I would allow this appeal. I think that the order of the learned trial Judge should be set aside and that Judgment should be entered for the appellant with costs in this Court and in the Court below.

TERRELL, J.—It is not necessary to recapitulate the facts which have been set out in the

judgment of the learned President of the Court and which I have had an opportunity of reading. The original charge for $6,500 was dated the 6th May, 1929, but the further charge, the power of attorney and the agreement were all dated the 14th August, 1930.

The two questions that arise are:

(a) whether the defendant was entitled to revoke the power of attorney which, by the express terms of the agreement, was irrevocable except upon repayment by the defendant of the sum of $20,100 owing upon the charge and further charge, and

(b) whether the transactions between the plaintiff and the defendant constitute a dealing or attempt to deal in Reservation-lands contrary to the provisions of Enactment No. 15 of 1913, in which case they would be null and void by virtue of section 13 of the Enactment.

The relevant sections of the Enactment are sections 7 and 8. The two sections are as follows:—

7. No State land included within a Malay Reservation under this Enactment shall be sold, leased, or otherwise disposed of to any person not being a Malay.

8. (i) No right or interest of any Malay in Reservation-land shall, except in pursuance of a sale effected with the consent of the Ruler of the State in Council as in Section 10 provided, be transferred to or vest in any person not being a Malay; provided that nothing in this section contained shall be deemed to prohibit the leasing of Reservation-land to persons other than Malays for any term not exceeding three years.

(ii) Notwithstanding anything contained in the "The Powers of Attorney Enactment, 1912" and except in the case of powers of attorney valid within the Federated Malay States immediately prior to the commencement of this Enactment, no power of attorney whereof the donee or any donee is a person not being a Malay shall, in so far as it relates to any right or interest of a Malay in Reservation-land, be irrevocable.

It is a well known rule of construction that where the arrangement between parties is contained in several documents all executed simultaneously, all the documents must be read together to ascertain the intention of the parties, and it is a corollary from this that the intention must be gathered from the documents as a whole. It has been held, for example, that when a Bill of Sale and a mortgage of a reversionary interest were executed simultaneously and related to the same debt, the bill of sale could be defeated by a condition contained only in the mortgage, *Edwards* v. *Marcus*, (1894) 1 Q.B. 587 [see also the dissenting judgment of Fletcher Moulton, L. J. in *Manks* v. *Whiteley* (1912) 1 Ch. 735 which was approved on appeal to the House of Lords, *sub nominee Whiteley* v. *Delaney*, (1914) A.C. 132.]

Reading the documents in this light it would appear that the defendant has purported to give the plaintiff the exclusive right to pluck coconuts, and that the plaintiff is not liable to account but is to take the cocoanuts in full satisfaction of the interest on the charge and all other outgoings in respect of the land. The power of attorney also gives the plaintiff the right to enter into possession of the rents and profits of the land, though if there were any rents or profits apart from the cocoanuts the plaintiff would presumably have to account for them. There is, however, no evidence that there were any such rents and profits. The power of attorney also gives the plaintiff the right to lease or sell any of the lands either together or in separate parcels. The plaintiff, so far as the cocoanuts are concerned, is not merely the agent of the defendant; nor has the defendant merely sold to the plaintiff certain standing crops in existence on the 14th August, 1930. It is also to be observed that the rights given to the plaintiff are really unlimited in time unless the defendant can provide the total amount advanced in the charges. All that the plaintiff binds himself to do is not to exercise his powers of sale for five years provided that his "right and benefits from the said lands remain undisturbed."

In substance the defendant has parted with all his interest in the land except possibly the right to continue in occupation of any tenement in which he is living, and even that right will be lost if after five years the plaintiff exercises his power of sale. The only right the defendant has left is to get his land back if he pays the full principal moneys owing within that period. The defendant's right is in fact that of a person who has sold his land, but for a limited period is entitled to the benefit of a *pactum de revendendo*

I think that the English authorities on the subject of the meaning of "an interest in land" are of little value in construing the meaning of F.M.S. Enactments which are entirely different to the English law on the subject, and that it would be dangerous to apply the refinements and technicalities which have been grafted on to the English Law of Real Property to an entirely different system of land tenure. It is to be observed, however, that in England the test is whether substantially the transaction is one for the sale of goods or for the creation of an interest in land (*Chitty* on Contracts, 18th Ed. p. 358), and where timber is sold and the contract does not provide for its immediate severance an

interest in land has been created [*Kauri Timber Co.* v. *The Commissioner of Taxes*, (1913) A.C. 771]. In my opinion the substance of the various documents must be ascertained, and I feel no doubt that the intention of the parties was to give the plaintiff some right and interest in Malay Reservation-land contrary to the provisions of the Enactment. Even regarding the effect of the documents as giving the plaintiff merely the right of a lessee and not complete dominion over the property, it is clear that the period of three years, limited by section 8 (i), has been far exceeded.

Although the charges had to be considered in coming to a conclusion as to the meaning and effect of the agreement and power of attorney, there is nothing contrary to the Enactment in the charges themselves, but for the reasons given above I find that the agreement was null and void and that the power of attorney was likewise null and void even if it had not been effectually revoked. I would accordingly allow the appeal with costs here and below.

Appeal allowed.

[APPELLATE CIVIL JURISDICTION]

CUSSEN, J.

April 27, 1935.

HUSSAIN ..... **Defendant-Appellant**

v.

CHANDA SINGH.....**Plaintiff-Respondent**

[SELANGOR MAGISTRATE'S CIVIL APPEAL No. 9 of 1935]

The Bills of Sale Enactment, 1922, section 6 (b)—In the form—The Interpretation and General Clauses Enactment, 1932, section 33.

Section 6 (b) of the Bills of Sale Enactment, 1922, must be read with section 33 of the Interpretation and General Clauses Enactment, 1932.

A bill of sale, given by way of security and containing a clause empowering the grantee to foreclose in the event of the grantor defaulting in payment of the principal or interest, does not conflict with the form prescribed under the Enactment.

S. M. Sharma for the defendant-appellant.

S. M. Yong for the plaintiff-respondent.

Cur. Ad. Vult.

CUSSEN, J.—This is an appeal against the decision of the Magistrate in Kuala Lumpur Magistrate's Civil Suit No. 1832/34.

The plaintiff in that suit asked for an order of seizure and sale of certain cattle in a Bill of Sale of which he was the grantee and of which the defendant in the suit was the grantor. The Magistrate made the order for seizure and sale, and against that order the defendant now appeals.

The appeal proceeds on two main grounds. The first is that the Bill of Sale was void under section 6 (b) of the Bills of Sale Enactment, 1922, on the ground that it is not made in the form A in the second schedule. That section provides that every Bill of Sale made or given by way of security for the payment of money by the grantor thereof shall be void if it is not made in the form A in the second schedule. That is the first main ground of appeal which is argued before me.

The second ground of appeal is that the Bill of Sale is void because the consideration has not been truly set forth in the bill, and consequently under section 4 of the Enactment the failure to truly set forth the consideration in the bill invalidates the bill in respect of the personal chattels comprised therein.

Now I will deal with the first ground of appeal that the bill is void because it is not in the form provided for in the Enactment. Counsel for appellant drew attention to the corresponding section in the 1919 Bills of Sale Enactment which was repealed by the present 1922 Enactment.

Section 7 of that Enactment, No. 26 of 1919, reads as follows:—

> "Every Bill of Sale made after the commencement of this Enactment shall be void unless made substantially in accordance with the form A in the second schedule."

The difference there is of course that in the former Enactment it states "made substantially in accordance with the form A in the second schedule" whereas the present Enactment says "if it is not made in the form A in the second schedule," and it is obvious from that that a literal compliance—exact compliance—with the form of the schedule is required.

In connection with that, however, we must consider section 33 of the Interpretation and General Clauses Enactment, 1932, which reads as follows:—

> "Save as otherwise expressly provided, wherever forms are prescribed slight deviations therefrom, not affecting the substance or calculated to mislead, shall not vitiate them."

So I think in applying section 6 of the Bills of Sale Enactment we must read with it section 33 of the Interpretation and General Clauses Enactment.

Various English decisions have been cited in argument, and, therefore, it may be helpful to consider the words of the English Act. The English Act corresponding to the section, uses the words "accordance with the form."

In *Thomas* v. *Kelly*, 13 A.C. 520 it is ruled that a divergence is substantial when it departs from the statutory form in anything which is characteristic of that form; so any substantial

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(Note.—An application was made to the Court of Appeal for leave to appeal against the decision of Cussen, J. The application was heard on the 16th May, 1935, before Burton, J., Whitley, J., and Howes, J., and was dismissed. —Editor).